



**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

July 24, 2009

VIA CERTIFIED MAIL AND REGULAR MAIL
RETURN RECEIPT REQUESTED

RH Brands
Attn: Bryan Kujawski, CEO
Ryan J. Brennan, CEO
Sarah Chesbro
1095 Zonolite Road
Atlanta, GA 30306

RE: File No. EB-09-TC-409

Dear Mr. Kujawski, Mr. Brennan, and Ms. Chesbro:

This is an official **CITATION**, issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 503(b)(5), for violations of the Act and the Federal Communications Commission's rules that govern telephone solicitations and unsolicited advertisements.¹ As explained below, you may appeal this citation. In addition, future violations of the Act or Commission's rules in this regard may subject you and your company to monetary forfeitures.²

Attached is a consumer complaint regarding prerecorded messages that your company, acting under your direction, has delivered to a residential telephone line or lines. This complaint indicates that you and your company have violated section 227(b)(1)(B) of the Act and section 64.1200(a)(2) of the Commission's rules. *See* 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

Under Section 227(b)(1)(B) of the Act and section 64.1200(a)(2) of the Commission's rules, it is unlawful for any person within the United States, or any person outside the United

¹ 47 U.S.C. § 227; 47 C.F.R. § 64.1200. A copy of these provisions is enclosed for your convenience. Section 227 was added to the Communications Act by the Telephone Consumer Protection Act of 1991 and is most commonly known as the TCPA. The TCPA and the Commission's parallel rules restrict a variety of practices that are associated with telephone solicitation and use of the telephone network to deliver unsolicited advertisements, including prerecorded messages to residential telephone lines.

² We have attached one complaint at issue in this citation. Within the complaint is the telephone number 805-351-8307, which your business utilized during the time period at issue.

States if the recipient is within the United States to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call

- (i) Is made for emergency purposes,³
- (ii) Is not made for a commercial purpose,
- (iii) Is made for a commercial purpose but does not include or introduce an unsolicited advertisement⁴ or constitute a telephone solicitation,⁵
- (iv) Is made to any person with whom the caller has an established business relationship⁶ at the time the call is made, or
- (v) Is made by or on behalf of a tax-exempt nonprofit organization.

Accordingly, it is generally unlawful to use an artificial or prerecorded voice to deliver an advertisement or telephone solicitation to a residential telephone line unless the call is made: (1) by or on behalf of a tax-exempt nonprofit organization; (2) with the prior express consent of the called party; or (3) to a person who has an established business relationship with the caller.

³ The term “emergency purposes” means calls made necessary in any situation affecting the health and safety of consumers.” 47 C.F.R. § 64.1200(f)(3).

⁴ The term “unsolicited advertisement” means “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission.” 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13).

⁵ The term “telephone solicitation” means

the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

- (i) To any person with that person's prior express invitation or permission;
- (ii) To any person with whom the caller has an established business relationship; or
- (iii) By or on behalf of a tax-exempt nonprofit organization.

47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(12).

⁶ The term “established business relationship” means

a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

47 C.F.R. § 64.1200(f)(4)

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The attached information indicates that your company, acting under your direction, delivered an unsolicited advertisement or telephone solicitation, through a prerecorded message, to one or more residential telephone subscribers who either (1) had not expressly invited or authorized the call(s) or (2) did not have an established business relationship with you or your company (a transaction within 18 months prior to the call(s), or an inquiry or application within 3 months prior to the call(s)). As explained above, this action violates section 227(b)(1)(B) of the Communications Act and section 64.1200(a)(2) of the Commission's rules.

Additionally, it appears that you and your company have also violated other Commission rules that govern all prerecorded messages. Under section 64.1200(b), prerecorded messages must, at the beginning of the message, state clearly the identity of the business (the name under which the business is registered to conduct business with the State Corporation Commission or comparable regulatory authority), individual, or other entity that is responsible for initiating the call. In addition, the telephone number⁷ or address of such business, or individual, or other entity must be provided either during or after the prerecorded message. According to the attached information received by the Commission, it appears that your telephone solicitation(s) did not contain all of the required information.

If, after receipt of this citation, you or your company violate the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation occurring before September 2, 2008, and \$16,000 for each such violation or each day of a continuing violation occurring on or after September 2, 2008.⁸

You may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. You may use this response to appeal this citation. For example, you may claim that you can document that you had an established business relationship with the called party at the time of the call or that you are a tax-exempt nonprofit organization. In addition, your response should specify the actions that you are taking to ensure that you do not violate the Commission's rules governing prerecorded messages, as described above.

You may schedule a personal interview at the nearest Commission field office. These offices are located in: Atlanta, GA; Boston, MA; Chicago, IL; Columbia, MD; Dallas, TX;

⁷ Any telephone number so provided may not be for (1) an autodialer or prerecorded message player that placed the call, (2) a 900 number, or (3) any other number for which charges exceed local or long distance transmission charges. In addition, any such telephone number provided in connection with a prerecorded sales messages to a residential telephone subscriber must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

⁸ See 47 C.F.R. §1.80(b)(3); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (forfeiture maximum set at \$11,000 for violators who are not common carriers or other entities specifically designated in section 503 of the Act); *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at \$11,000); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, FCC 08-154, rel. June 13, 2008 (amendment of section 1.80(b) to reflect inflation increased the forfeiture maximum for this type of violator to \$16,000, effective September 2, 2008).

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Denver, CO; Detroit, MI; Kansas City, MO; Los Angeles, CA; New Orleans, LA; New York, NY; Philadelphia, PA; San Diego, CA; San Francisco, CA; Seattle, WA; and Tampa, FL. Please call Al McCloud at 202-418-2499 if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

Kurt A. Schroeder
Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W.
Rm. 4-C222
Washington, D.C. 20554

Reference EB-09-TC-409 when corresponding with the Commission.

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format): 202-418-0531 (voice), 202-418-7365 (tty).

Under the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kurt A. Schroeder
Deputy Chief, Telecommunications Consumers Division

Federal Communications Commission

Enforcement Bureau
Federal Communications Commission

Enclosures